IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.81 OF 2004

State of Maharashtra ...Appellant

Versus

Kashinath Sitaram Gavand & Anr. ...Respondents

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Mr.U.V.Nikam, A.P.P. for Appellant.

Mr.S.V.Gavand for Respondents.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 17, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. I see no infirmity in the approach adopted by the Court below in acquitting the Respondents in relation to the offence punishable under Sections 306 and 498-A of the Indian Penal Code. The Court below has rightly discarded both the dying declarations, for the reasons mentioned in the

Judgment. The finding recorded by the Trial Court in Paragraph Nos.21 and 22 is supported by the evidence on record. It is seen that the first dying declaration recorded by the Constable is doubtful for the reasons noted in Paragraph No.21. Similarly, the second dying declaration recorded by the Executive Magistrate is also doubtful, as the Medical Officer has accepted the fact that he had made endorsement that the patient was unable to speak at 4.05 p.m. whereas, the dying declaration has been recorded at 4.15 p.m. In such a short time, it is inconceivable that a patient who has suffered 100% burn injuries will be in a position to speak. If the dying declaration is to be ignored, the entire prosecution case would fall to the ground.

3. Besides, I am in agreement with the finding recorded by the Court below on the issue that there is absolutely no evidence to establish the fact that the nature of cruelty suffered by Kavita was such, which forced her to commit suicide. No details have been given in the dying declaration, which in any case, will have to be

discarded. Besides, the evidence of witnesses which has come on record, as has been rightly observed by the Trial Court, do not give any details as to what was the nature of cruelty administered by the accused. If it is so, the ingredient of Section 306 of the Indian Penal Code has not been fulfilled, for which reason, acquittal has been, in my opinion, rightly recorded. Hence, dismissed.

A.M.KHANWILKAR, J.